

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

Bail Appl..No. 5613 of 2007()

CRIME NO.156/07 OF PIRAVAM POLICE STATION

: PETITIONER/2ND ACCUSED

GOPACHANDRAN NAIR, S/O.SAROJINI AMMA,
ONATTU HOUSE, ONAKKUR VILLAGE, MUVATTUPUZHA
TALUK, ERNAKULAM DISTRICT.

BY ADV. SRI.DEEPU THANKAN
SMT.O.H.NAZEEBA

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
SUB INSPECTOR OF POLICE, PIRAVAM POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 20/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

B.A.No.5613 of 2007

Dated this the 20th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner is arrayed as the 2nd accused in the F.I.R, in which allegations are raised, inter alia, under Sections 468 & 420 I.P.C. The crime has been registered on the basis of a private complaint filed before the Magistrate and referred to the police under Section 156(3) Cr.P.C. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The facts appear to be interesting and intriguing too. The petitioner has an item of property. He apprehended that his property may be taken away under revenue recovery proceedings. He is alleged to have executed a document conveying the property to one Suresh. From that Suresh, the defacto complainant is alleged to have purchased the property. There were civil litigations between the rival contestants. The defacto complainant filed a private complaint arraying both the petitioner and the said Suresh as accused. The police commenced investigation. In the course of investigation, the police realised that the assignee of the petitioner - the vendor of the defacto complainant Suresh, is a fake non existent person. Such a document was created for the purpose of defrauding the defacto

complainant. The petitioner had allegedly put up a person as the said Suresh and had negotiated for the sale of the property from the said Suresh to the defacto complainant. The entire process was nothing but a fraudulent device of the petitioner to defraud the defacto complainant. The petitioner has to be taken into custody and interrogated closely to find out whether the said Suresh exists or who has pretended to be the said Suresh. Until that is ascertained, the case cannot make further progress and the present indications suggest that the said Suresh is a non existent person and the petitioner had put up a person to make it appear that he is the said Suresh. The application for anticipatory bail is stoutly opposed by the learned Public Prosecutor .

3. I have considered all the relevant inputs. The case diary has been placed before me. Notwithstanding the fact that the defacto complainant has not alleged that the said Suresh is a fake, non existent person in any of the previous proceedings and notwithstanding the alleged fact that the defacto complainant has not specifically averred at any earlier stage that the petitioner herein had negotiated for the sale of the property on behalf of the said Suresh, I am of the opinion that this is not a fit case where directions under Section 438 Cr.P.C can or ought to be issued in favour of the

petitioner. In coming to this conclusion, I must say that I have perused the case diary in detail. I have perused the complaint filed by the defacto complainant. I have perused the earlier proceedings in the Suit filed by the contestants made available to me. In spite of all that, I am satisfied, that the petitioner is not entitled to be granted anticipatory bail. This, I am satisfied, is a fit case where the petitioner must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction. He can then seek regular bail in the ordinary course.

4. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-